

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

JUAN ANTONIO RIVAS
2035 Jennings Street
Woodbridge, Virginia 22191

Plaintiff,

v.

ESPINA PAVING, INC.
15441 Farm Creek Drive
Woodbridge, Virginia 22191

Serve: Registered Agent
Michael R. Vanderpool
9200 Church Street
Suite 400
Manassas, Virginia 20110

and

JOSE ROUBIN
15441 Farm Creek Drive
Woodbridge, Virginia 22191

JOSE ROUBIN, JR.
15441 Farm Creek Drive
Woodbridge, Virginia 22191

Defendants.

Civil Action No.

COMPLAINT

Plaintiff, Juan Antonio Rivas ("Plaintiff"), by and through his attorneys, Mary J. Craine Lombardo and Stein Sperling Bennett De Jong Driscoll PC, hereby files his Complaint against Defendants Espina Paving, Inc., Jose Roubin and Jose Roubin, Jr. (collectively "Defendants"), under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* ("FLSA"), stating as follows:

STEIN SPERLING BENNETT
DE JONG DRISCOLL PC

ATTORNEYS AT LAW
25 WEST MIDDLE LANE
ROCKVILLE, MARYLAND 20850

TELEPHONE 301-340-2020

INTRODUCTION

Plaintiff worked for Defendants as a laborer. He worked in excess of forty hours per week during the working seasons and was not properly compensated for the overtime hours that he worked. Defendants have willfully violated the clear and well-established overtime provisions of the FLSA. Plaintiff seeks compensatory and statutory damages for all unpaid overtime compensation, as well as attorneys' fees and costs.

JURISDICTION & VENUE

1. This Court has subject matter jurisdiction over the causes of action alleged in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1367, and 29 U.S.C. § 216.

2. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

3. Plaintiff is an adult resident of Virginia.

4. Defendant Espina Paving, Inc. ("Espina Paving") is a Virginia corporation with its location and operations in Virginia.

5. Defendant Jose Roubin and Jose Roubin, Jr. (the "Individual Defendants") are the principals of Espina Paving.

6. Upon information and belief, at all times material herein, Defendants, in the aggregate and as a single enterprise, had annual gross volume of sales made or business done in an amount exceeding \$500,000.

7. The Individual Defendants controlled the day to day operations of the business.

8. The Individual Defendants had the power to hire, fire, suspend, and discipline Plaintiff.

9. The Individual Defendants supervised Plaintiff directly or indirectly.

10. The Individual Defendants directly or indirectly set and controlled Plaintiff's work schedule or had the power to do so.

11. The Individual Defendants directly or indirectly set and determined the rate and method of Plaintiff's pay or had the power to do so.

12. Federal courts have made clear that individual employers are liable under FLSA, if the employer met the economic reality test for "control." *Chao v. Mid-Atlantic Installation Services, Inc.*, 16 Fed Appx. 104 (2001).

13. The Individual Defendants would be considered an employer for purposes of individual liability because of their intrinsic involvement in the business.

FACTS

14. Plaintiff was employed by Defendants from September 1, 2014 through August 22, 2016 (the "Employment Period").

15. Plaintiff was paid at a weekly rate of \$1,250.00 regardless of the amount of hours worked.

16. Plaintiff worked hours in excess of forty per week and was never compensated at the required overtime rate of one and one half times his regular hourly rate for those hours worked over forty hours per week.

17. Plaintiff is owed approximately \$16,562.71 in unpaid overtime wages.

18. Plaintiff is owed overtime wages that Defendants willfully failed and refused to pay to Plaintiff in violation of federal law.

19. By statute, Defendants are required to maintain records which document the number of days Plaintiff worked. *See* 29 U.S.C. §211(c).

20. The precise number of hours worked, and wages owed, should be revealed through discovery.

21. Defendants knowingly and intentionally violated Plaintiff's rights under federal law.

**COUNT I
(FLSA)**

22. Plaintiff adopts herein by reference paragraphs 1 through 21 above as if fully set forth herein.

23. At all times relevant hereto, each Defendant was an "employer" within the meaning of the FLSA. 29 U.S.C. § 203(d).

24. Defendants were engaged in "interstate commerce" within the meaning of the FLSA.

25. Plaintiff was an "employee" within the meaning of the FLSA.

26. Defendants were required to pay Plaintiff compensation at the rate of one and a half times his regular hourly rate for all hours worked in excess of forty hours per week. *See* 29 U.S.C. § 207(a)(2).

27. Throughout the Employment Period, Defendants failed to compensate Plaintiff at the rate of one and a half times his regular hourly rate for all hours worked in excess of forty hours per week.

28. Defendants' actions complained of herein constitute a willful violation of the FLSA.

29. Defendants' violation makes them liable to Plaintiff for all unpaid overtime compensation, and an additional equal amount as liquidated damages.

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WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment against Defendants, jointly and severally, and in his favor in an amount to be determined at trial, but not less than \$33,125.42 which is two times the total overtime wages owed, reasonable attorneys' fees and costs, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

STEIN SPERLING BENNETT
DE JONG DRISCOLL PC

By: /s/ Mary J. Craine Lombardo
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